

MAINE STATE LEGISLATURE

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(Governor's Bill)
(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1573

H. P. 1321

House of Representatives, April 20, 1979

Referred to the Committee on Appropriations and Financial Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Pearson of Old Town.

Cosponsor: Mr. Morton of Farmington.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Fund and Implement Agreements Between the State and the Maine State Employees Association and to Fund and Implement Benefits for Managerial and Other Employees of the Executive Branch Excluded from Coverage under the State Employees Labor Relations Act.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses incident to the operation of state collective bargaining agreements will become due and payable immediately; and

Whereas, it is the responsibility of the Legislature to act upon those portions of tentative collective bargaining agreements negotiated by the Executive Branch which require legislative action; and

Whereas, the Legislature, by such actions, shall not be deemed to have the effect of making any modification in the existing laws of this State that may either permit or prohibit the inclusion, in a negotiated collective bargaining agreement

on behalf of state employees, of a provision requiring, as a condition of employment, that employees not members of the labor organization pay to that organization their proportionate share of the costs of securing the benefits conferred upon all members of the bargaining unit or may either permit or prohibit the inclusion in such an agreement of a provision requiring that, as a condition of employment, employees not members of labor organization pay a service fee equal to 80% of the labor organization membership dues as a contribution toward the costs of the labor organization for collective bargaining, contract administration and the adjustment of grievances; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Appropriations and available funds. There is appropriated from the General Fund to a special compensation account the sum of \$2,829,000 for the fiscal year ending June 30, 1979 and there is made available from the Highway Fund employees compensation plan the sum of \$2,358,000 for the fiscal year ending June 30, 1979 to implement the economic terms agreed to by the State of Maine and the Maine State Employees Association for the administrative services, professional and technical services, operations, maintenance and support services, law enforcement services bargaining units and supervisory services bargaining unit.

Sec. 2. Appropriations and allocation. There is appropriated from the General Fund to a special compensation account the sums of \$7,227,000 for the fiscal year ending June 30, 1980 and \$7,227,000 for the fiscal year ending June 30, 1981, to implement the economic terms agreed to by the State and the Maine State Employees Association for the administrative services, professional and technical services, operations, maintenance and support services, law enforcement services bargaining units and supervisory services.

Sec. 3. Funding. The funding provided by this Act shall include retirement costs and shall be available for all employees covered by these agreements between the State and the Maine State Employees Association, except that employees supported from sources of funding other than the General Fund shall be funded whenever possible from those sources.

Sec. 4. Special account. The funding provided shall be segregated into a special compensation account to be made available as needed upon the recommendation of the State Budget Officer with the approval of the Governor.

Sec. 5. Adjustment of other employees. The current state salary plan for employees in these bargaining units shall be adjusted on April 1, 1979 and July 1, 1979 to reflect the salary provisions of these negotiated agreements. The current salary plans for other employees not in any bargaining unit shall be similarly adjusted.

Sec. 6. Effect. Except as provided herein, the provisions of the agreements between the State and the Maine State Employees Association shall prevail over any other provisions of law. Provided, however, that this section shall not, in any way, modify the legal rights of any state employee, under laws existing prior to the enactment of this legislation, with respect to the existence or absence of any legal duty to comply with any provision requiring, as a condition of employment, that state employees not members of the Maine State Employees Association pay a service fee to the Maine State Employees Association as a contribution towards the costs of the Maine State Employees Association for collective bargaining, contract administration and the adjustment of grievances nor shall this section diminish the rights of any state employee provided under the State Employees Labor Relations Act, Maine Revised Statutes, Title 26, chapter 9-B. Notwithstanding the Maine Revised Statutes, Title 5, section 11, the State Controller is authorized to implement the salary benefits that become effective April 1, 1979 and July 1, 1979.

Sec. 7. Employees; similar and equitable treatment. Employees in classifications which are included in the administrative services, professional and technical services, operations, maintenance and support services, law enforcement services and supervisory services bargaining units, but who are excluded pursuant to the Maine Revised Statutes, Title 26, section 979-A, subsection 6, paragraphs C and E shall be given similar and equitable treatment to employees covered by the agreements.

Sec. 8. 5 MRSA § 8, first sentence, as amended by P & SL 1975, c. 147, Part C, § 5, is repealed and the following enacted in its place:

The State shall pay for the use of privately owned automobiles for travel by employees of the State in the business of the State such reimbursement as agreed to between the State and their certified or recognized bargaining agent. For employees and state officers and officials not subject to any such agreement, the State shall pay 18¢ per mile for miles actually traveled by such employees on such business.

Sec. 9. Unclassified employees subject to Governor's determination. With respect to individual unclassified employees whose wage rates are subject to the Governor's determination, the Governor may grant similar and equitable treatment consistent with the salary provisions agreed to in the Supervisory Services Bargaining Unit.

Sec. 10. Employees not subject to Governor's determination. With respect to classified and unclassified employees whose wage rates are not subject to determination by the Governor and not in classifications within any bargaining unit, the authorities responsible for determining the wage rates of such employees shall grant similar and equitable treatment consistent with the salary provisions agreed to in the Supervisory Services Bargaining Unit. This section shall not be construed to apply to officers and employees of the Legislative and Judicial Branches of the State of Maine or to officers whose salaries are set by the Maine Revised Statutes, Title 2, section 6-A, subsections 1 and 2 and by section 7.

Sec. 11. Carrying clause. Any balances remaining from previous salary accounts and any balances remaining from salary accounts established by this Act shall not lapse but shall carry forward to June 30, 1981.

Sec. 12. Special authorization for expenditure. There is authorized for expenditure from the Contingent Account to a special account the sum of \$10,000 for the fiscal year ending June 30, 1979 to implement as executed letter of agreement between the State and the Maine State Employees Association for the purpose of compensating the attorney or attorneys representing plaintiff state employees in the matter now pending in the Kennebec County Superior Court and docketed as CV-79-232 which plaintiffs are not members of the Maine State Employees Association but are included within the bargaining units covered by the agreements. This action has been brought to determine whether existing law permits or prohibits the inclusion, in a negotiated collective bargaining agreement on behalf of state employees, of a provision requiring, as a condition of employment, that employees not members of the labor organization pay to that organization their proportionate share of the costs of securing the benefits conferred upon all members of the bargaining unit or whether existing law permits or prohibits the inclusion in such an agreement of a provision requiring that, as a condition of employment, employees not members of the labor organization pay a service fee equal to 80% of the labor organization membership dues as a contribution toward the costs of the labor organization for collective bargaining, contract administration and the adjustment of grievances.

This authorization for expenditure for the purpose of compensating such attorney or attorneys shall continue, to the extent of the authorization, to apply in any subsequent proceeding consistent with the letter of agreement referred to herein.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

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STATEMENT OF FACT

This bill provides funding and implementation of the agreements reached between the State and the Maine State Employee Association (MSEA) for the administrative services, professional and technical services, operations, maintenance and support services, law enforcement services and supervisory services bargaining units and benefits for managerial, confidential and excluded employees not subject to any collective bargaining agreement.

Members of the MSEA have ratified the tentative agreements reached March 10, 1979 and March 14, 1979.

The economic features of the 4 nonsupervisory agreements are: A retroactive lump sum payment of \$15 per week for each week worked during the period from July 1, 1978 to April 1, 1979. The salary schedules are increased by \$16 a week effective April 1, 1979 and by \$15 or 6%, whichever is greater, effective July 1,

1979. The nonstandard workweek premium is increased to 16%, mileage reimbursement is raised to 18¢ per mile and in-state meal allowances are established at maximums of \$2.50 for breakfast, \$3.50 for lunch and \$7 for dinner, including gratuities. Additionally, these agreements provide, as appropriate, for uniforms and telephone allowances, standardized call-out and stand-by pay provisions and payment by the State of any increased premium for dependent coverage resulting from adoption by the board of trustees of the health insurance program of schedule "E" of Blue Shield coverage.

The economic features of the supervisory services agreement are: The retroactive lump sum payment of \$15 per week for the period from July 1, 1978 to April 1, 1979, the salary schedules are increased \$16 or 6%, whichever is greater effective April 1, 1979 and by \$15 or 6%, whichever is greater, effective July 1, 1979.

The other economic aspects are comparable to those contained in the nonsupervisory agreement.

Section 6 of this bill provides that the agreements between the State and MSEA shall prevail over other provisions of law. Some areas of the negotiated agreements impact on existing law, particularly provisions dealing with group health coverage, payroll deductions, retirement, vacations, sick leave, reclassifications and reallocations, personnel files, discipline, grievance and arbitration procedures, worker's compensation and housing for State Prison employees.

Section 6 also provides that enactment of this provision will not, in any way, modify employee rights under existing law with respect to the existence or absence of any legal duty to comply with any union security provision in the agreements.

Section 12 provides for funding by the State to pay the costs of an attorney or attorneys to represent nonmembers of MSEA in determining the legality of permitting or prohibiting the inclusion of a union security provision in the agreements pursuant to a letter of agreement between the State and MSEA. The text of the letter of agreement is as follows:

LETTER OF AGREEMENT

This letter is intended to embody our agreement with respect to implementation of the Union Security article in the collective bargaining agreements (the agreements) negotiated between the State of Maine and the Maine State Employees Association (MSEA).

MSEA agrees that it will not implement or enforce the Union Security provision before the sixtieth day following the execution of the Agreements, except to the extent necessary to insure proper jurisdiction and standing before any court or agency of the State. In the event that any state employee or class of employees commences any action, complaint or legal proceeding against the State, MSEA,

or both, pursuant to the Maine Declaratory Judgments Act, 14 MRSA § 5951 et seq., challenging the legality, on any basis, of the Union Security article prior to the expiration of sixty days following the execution of the Agreements, MSEA further agrees that it will not implement or enforce the Union Security article until such time as a final determination, including any appeals, of the question of the legality of such provision has been reached in that case. In the event that such Declaratory Judgment action fails to resolve the basic legal question as the result of irregularities in the initiation of the action, lack of standing of the parties, selection of the judicial forum, failure to exhaust administrative remedies, or other procedural reasons, MSEA further agrees to permit the initiation of a subsequent action, complaint, or legal proceeding, consistent with the opinion in the initial action, within thirty days from the effective date of decision in the initial action. In the event that a subsequent proceeding is initiated within that thirty day period, MSEA agrees that it will not implement or enforce the Union Security provision until such time as a final determination, including any appeals, has been reached in that case. MSEA further agrees that, in the event it is determined that such Union Security provision is lawful, enforcement of the provision will be applied prospectively.

Name
For the State of Maine

Name
For the Maine State Employees
Association

The economic features covering state officers and employees not eligible for collective bargaining are comparable to the salary provisions for the supervisory unit, including the retroactive lump sum payment of \$15 per week for each week worked during the period from July 1, 1978 to April 1, 1979, salary schedule increases of \$16 or 6%, whichever is greater, effective April 1, 1979, and of %15 or 6%, whichever is greater, effective July 1, 1979. Section 8 increases the mileage allowance for employees not subject to collective bargaining agreements to 18¢ per mile.

Excluded from eligibility for these salary increases are employees of the Legislative and Judicial Branches. Section 9 allows the Governor discretion to appropriately apply the compensation provisions applicable to managerial and confidential employees without requiring such increases for department heads and others whose salaries have recently been established.